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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1965.

No. 22 Original

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

NICHOLAS de B. KATZENBACH, Attorney General of the United States,

Defendant.

BRIEF OF THE STATE OF ILLINOIS AS AMICUS CURIAE.

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 N. La Salle Street, Suite 900,
Chicago 1, Illinois, FI 6-2000,

RICHARD E. FRIEDMAN,
First Assistant Attorney General,
RICHARD A. MICHAEL,
PHILIP J. ROCK,
Assistant Attorneys General,
Of Counsel.

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The State of Illinois, by William G. Clark, Attorney General of Illinois, respectfully submits its brief on the merits as *amicus curiae.*

I.

THE INTEREST OF THE STATE OF ILLINOIS

Pursuant to the invitation of this Court on November 5, 1965, the State of Illinois respectfully submits its interest as follows.

The most fundamental right of the citizens of the State of Illinois and of the citizens of all the states of the United

States is their collective determination and selection of their representatives who make laws. If this right is abridged or diluted by any means, a true expression of the ideals and aspirations of our citizenry cannot be achieved. It is imperative that every citizen be given the opportunity to vote on all questions which may be presented to the general electorate. To deny this right will substantially weaken the fundamental strength of our nation.

On March 5, 1869, Illinois was the third state to ratify the Fifteenth Amendment, less than one month after its proposal. Illinois was the first state to ratify the Nineteenth Amendment on June 10, 1919. Illinois was also the first state to ratify the Twenty-Fourth Amendment on November 14, 1962. Historically and by tradition, the State of Illinois has been in the forefront of legislative acts which have strengthened the voting rights of citizens, and is most sensitive to any incursion or abridgement of this right. The State of Illinois, therefore, is honored to participate in this case in support of the constitutionality of the Voting Rights Act of 1965.

II.

ARGUMENT.

The Voting Rights Act of 1965 as introduced, reported, passed, and approved is primarily intended to enforce the Fifteenth Amendment to the Constitution of the United States. Like every enactment of Congress, it comes before this Court with weighty presumptive validity, and that validity is not, we submit, overborne by any claim urged against it.

The command of the Fifteenth Amendment is unequivocal and its equal force upon state government and the Federal government is unarguable. That amendment reads:

> "The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." (Amend. XV § 1)
>
> "The Congress shall have power to enforce this article by appropriate legislation." (Amend. XV § 2)

Hence, expressly delegated to the Congress by the people and by the States, is the power to enact legislation to prevent the denial or abridgement of the right to vote on account of race or color. This Court has so stated in *James* v. *Bowman,* 190 U. S. 127, at 138-139, quoting *United States* v. *Reese,* 92 U. S. 214, 217:

> "The Fifteenth Amendment does not confer the right of suffrage upon any one. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption this could be done. It was as much within the power of a State to exclude citizens of the United States from

> voting on account of race, etc., as it was on account of age, property or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guaranty against this discrimination; now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by 'appropriate legislation.'"

The power and authority of Congress to enact a law to protect the voting rights of all citizens from discrimination because of race or color is thus established.

The question then becomes whether this act is an appropriate exercise of that Congressional power.

In the case of *Ex Parte Virginia*, speaking of the three postwar amendments, this Court said:

> "Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power." (100 U. S. at 345-346).

Therefore the act in question is appropriate if it is designed to prevent discrimination on account of race or color in the exercise of the right to vote.

To address oneself to the appropriateness of legislation is to make relevant the "legislative facts" in an inquiry

otherwise free of factual issues. "But by their very nature such inquiries, where the legislative judgment is drawn in question, must be restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it." *United States* v. *Carolene Products,* 304 U. S. 144, 154.

Here the legislative record is ample indeed and these facts clearly obtain: in widespread areas of several states tests and devices as defined in the Act have been effectively used to deny or abridge the right to vote on account of race or color. House Report No. 439 and the Joint Views of 12 Members of the Judiciary Committee relating to the Voting Rights Act of 1965, reported, respectively, in the U. S. Code Congressional and Administrative News September 5, 1965, No. 10, pages 2507-2518 and pages 2610-2624 effectively detail the testimony heard and the documentary material submitted to develop the record, a recitation of which would be merely cumulative or repetitive. However, based on those legislative facts the conclusion was that, where there is coincidence of low registration or voting and the use of "tests and devices", the former is the result of racial discrimination in the use of the latter, and therefore more effective federal action is required.

Since these tests and devices are being used as a tool of discrimination in some states in preventing citizens from exercising their right to vote on the basis of race and color, legislation, prohibiting their employment in those circumstances where the voting records of a given state prove that they have been used to perpetrate that which the Fifteenth Amendment was designed to uproot is an appropriate exercise of the Congressional power.

This proscription or automatic suspension of voter qualification laws where necessary to meet the risk of continued or renewed violations of constitutional rights will give

way to a judicial declaration that the tests or devices are not so employed, but it is a means to solve a problem within the legitimate concern of the Congress and the choice of means is largely a legislative question. Given a "rational basis" for the congressional action the Court's investigation is at an end. *Katzenbach* v. *McClung,* 379 U. S. 294, 303-304.

It remains only to determine whether or not the Act, although appropriate, is prohibited in light of Article I, Section 2 and the Seventeenth Amendment which commit the matter of qualification of voters to the states. The states have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised. However, these state conditions or standards may not be discriminatory nor may they contravene any constitutional restriction. Hence, when state power is abused, as here shown, subject to judicial declaration otherwise, that power is subject to Federal action by Congress as well as by the courts under the Fifteenth Amendment.

CONCLUSION

For the reasons stated it is respectfully submitted that the Court sustain the constitutionality of the Voting Rights Act of 1965.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 North La Salle Street,
Chicago, Illinois 60601,

RICHARD E. FRIEDMAN,
First Assistant Attorney General,

RICHARD A. MICHAEL,

PHILIP J. ROCK,
Assistant Attorneys General,

Of Counsel.

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